

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 FRANCISCO TORRES FELIX,

8 Defendant.

Case No. 07-cr-00106-CW-2

ORDER DENYING SECOND § 3582
MOTION AND MOTION FOR
APPOINTMENT OF COUNSEL

(Dkt. No. 225)

9
10 Movant Francisco Torres Felix, a federal prisoner proceeding
11 without counsel, has filed a motion to reduce his sentence
12 pursuant to 18 U.S.C. § 3582(c)(2) following Amendment 782 to the
13 United States Sentencing Guidelines and a motion for appointment
14 of counsel. The Court DENIES both motions for the reasons set
15 forth below.

16 First, § 3582(c)(2) is inapplicable. It states that the
17 Court may modify a term of imprisonment after its imposition "in
18 the case of a defendant who has been sentenced to a term of
19 imprisonment based on a sentencing range that has subsequently
20 been lowered by the Sentencing Commission" 18 U.S.C. §
21 3582(c)(2). The Court's August 13, 2015, Order denying Movant's
22 first § 3582 motion held that "defendant is not eligible for a
23 reduction because his sentence was the statutory mandatory
24 minimum."¹ Docket No. 215. This remains true. The relevant policy

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26 ¹ Movant was sentenced to fifteen years imprisonment based on
27 six counts, including violations of 21 U.S.C. § 841(a)(1) and 18
28 U.S.C. § 924(c)(1)(A). A violation of § 841(a)(1) carries a ten-
year mandatory minimum sentence if, as here, the defendant's
violation involved five or more kilograms of cocaine or its

1 statement explains that a prisoner cannot avail himself of §
2 3582(c)(2) if an amendment "does not have the effect of lowering
3 the defendant's guideline range because of the operation of
4 another guideline or statutory provision (e.g., a statutory
5 mandatory minimum term of imprisonment)." U.S.S.G. § 1B1.10 app.
6 n. 1(A); see also United States v. Paulk, 569 F.3d 1094, 1095
7 (9th Cir. 2009) (concluding that defendant is not entitled to a
8 sentence reduction because his sentence was based on the
9 statutory mandatory minimum). Accordingly, the Court DENIES
10 Movant's § 3582(c)(2) motion.

11 Second, Movant is not entitled to the appointment of counsel
12 in relation to a § 3582(c)(2) motion. See United States v.
13 Townsend, 98 F.3d 510, 512-13 (9th Cir. 1996). Nor could counsel
14 assist Movant with his § 3582(c)(2) motion for the reasons above.
15 Accordingly, the Court DENIES Movant's motion for the appointment
16 of counsel.

17
18 IT IS SO ORDERED.

19
20 Dated: November 28, 2018


21 CLAUDIA WILKEN
22 United States District Judge
23
24
25

26 derivatives. See 21 U.S.C. § 841(b)(1)(A). A violation of §
27 924(c)(1)(A) carries a five-year mandatory minimum sentence that
28 shall run consecutively to a punishment provided under §
841(a)(1). See 18 U.S.C. 924(c)(1)(A)(i). Thus, the collective
mandatory minimum sentence for these violations is fifteen years.